

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GREAT NORTHERN INSURANCE COMPANY
As Subrogee of Jon and Abby Winkelreid
200 S. 6th Street
Suite 1000
Minneapolis, Minnesota 55402-1470

Plaintiff

v.

FERGUSON & SHAMAMIAN ARCHITECTS, LLP
270 Lafayette Street
Suite 300
New York, New York 10012

and

W.B. MARDEN COMPANY
2 Milk Street
Nantucket, Massachusetts 02554

Defendants

CIVIL ACTION
NO. 05-CV-10165-RGS

**MOTION OF THE DEFENDANT FERGUSON & SHAMAMIAN ARCHITECTS, LLP
FOR LEAVE TO FILE A THIRD-PARTY COMPLAINT**

Pursuant to Rule 14(a) of the Federal Rules of Civil Procedure, the defendant and third-party plaintiff, Ferguson & Shamamian Architects, LLP ("Ferguson & Shamamian"), respectfully moves that this Court grant it leave to file and serve a third-party complaint against Thirty Acre Wood LLC ("Thirty Acre Wood"). A copy of the proposed third-party complaint is attached hereto as Exhibit "A".

In support of this motion, Ferguson & Shamamian states as follows:

1. This matter arises from the construction of a new residence for Jon and Abby Winkelreid, located at 15 Cathcart Road, Nantucket, Massachusetts (the "Project"). The

Winkelreids retained Ferguson & Shamamian to provide architectural services in connection with the Project. The Winkelreids retained Thirty Acre Wood as the general contractor on the Project. Thirty Acre Wood was responsible for supervising construction. Thirty Acre Wood or its subcontractor was also responsible for labeling the valves for the piping, installing insulation around the pipe, and installing key water detection devices per the contract documents.

2. Prior to January 19, 2004, Thirty Acre Wood shut down the water to the house and drained the domestic water system. Thirty Acre Wood turned off the humidifier, but failed to turn off the water supply to the humidifier above Bedroom #2.

3. On or about January 19, 2004, cold air became introduced into the attic space below the roof as a result of construction defects. As a result, a water pipe at the Project froze and burst.

4. The plaintiff, Great Northern Insurance Company, subrogee of Jon and Abby Winkelreid, filed a complaint against Ferguson & Shamamian and the plumbing subcontractor, W.B. Marden Company, alleging that its insureds suffered damages as a result of the January 19, 2004 pipe burst. Ferguson & Shamamian has denied all of the material allegations in the complaint.

5. Thirty Acre Wood failed to supervise the construction sufficiently to ensure that all piping and roof insulation was performed and/or installed properly. Thirty Acre Wood or its subcontractor also failed to properly label the valves for the piping; failed to properly install insulation around the pipe; and failed to install key water detection devices per the contract documents.

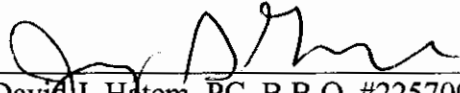
6. If the plaintiff proves that the pipe froze and burst as a result of the negligence of Ferguson & Shamamian, which liability Ferguson & Shamamian expressly denies, Thirty Acre Wood may be liable to Ferguson & Shamamian for contribution and/or indemnification.

7. There will be no prejudice to the plaintiff or any other party if this Court allows this motion. Discovery has just started and no depositions have been taken yet.

8. Ferguson & Shamamian submits that this Court should allow this motion so that Ferguson & Shamamian can bring this action, rather than a separate action, against those who may be liable for all or part of the plaintiff's claims against Ferguson & Shamamian.

WHEREFORE, Ferguson & Shamamian respectfully moves that this Court grant it leave to file the attached third-party complaint, and for such additional relief as this Court deems just.

Respectfully submitted,
FERGUSON & SHAMAMIAN
ARCHITECTS, LLP,
By its attorneys,



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Tel: (617)406-4500

Dated: 7.26.05

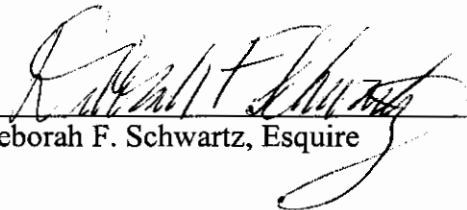
CERTIFICATE OF SERVICE

I, Deborah F. Schwartz, Esquire, hereby certify that on this 28th day of July, 2005, I served the attached ***Motion of the Defendant Ferguson & Shamamian Architects, LLP for Leave to File a Third-Party Complaint*** by mailing a copy thereof, postage pre-paid to:

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